

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THOMAS PROCTOR, JR.,

Plaintiff(s)

vs.

JAMES ERWIN, Warden,

Defendant(s)

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Case Number: 1:02cv491-SJD

District Judge Susan J. Dlott

ORDER

The Court has reviewed the Report and Recommendations of United States Magistrate Judge Timothy S. Black filed on August 16, 2004(Doc. 14), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired September 2, 2004, hereby ADOPTS said Report and Recommendations.

IT IS ORDERED that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is hereby DENIED with prejudice.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this order would not be taken in “good faith” and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

A certificate of appealability shall not issue with respect to petitioner’s grounds for relief alleged in the petition, which this Court has concluded are barred from review on procedural statute of limitations grounds, because “jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling” under the first prong of the applicable two-

part standard enunciated in *Slack v McDaniel*, 529 U.S. 473, 484-485 (2000).

IT IS SO ORDERED.

____s/Susan J. Dlott____
Susan J. Dlott
United States District Judge